

215597

UNITED STATES COURT OF APPEALS FOR THE
NINTH CIRCUIT

WILLIAM EDWARD BROWN,
Appellant,
v.
UNITED STATES OF AMERICA,
Respondent.

Vol. 30810-20 (C)

APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF CALIFORNIA
NORTHERN DISTRICT

APPELLANT'S OPENING BRIEF

FILED

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STATE OF NEW YORK

IN SENATE

JANUARY 20, 1891

REPORT OF THE

1891

COMMISSIONERS OF THE LAND OFFICE

1891

IN RESPONSE TO A RESOLUTION

1891

PASSED BY THE SENATE

1891

APRIL 1, 1891

1891

THE COMMISSIONERS OF THE LAND OFFICE have the honor to acknowledge the receipt of a copy of the report of the COMMISSIONERS OF THE LAND OFFICE, dated and captioned as above, and to inform you that the same has been forwarded to the proper authorities for their consideration.

Very respectfully,
 JOHN W. ALLEN,
 COMMISSIONER OF THE LAND OFFICE.

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1 UNITED STATES COURT OF APPEALS FOR THE
2 NINTH CIRCUIT

3 WILLIAM EDWARD ROSE,
4 Appellant,

No. 36910-SD (C)

5 v.

6 UNITED STATES OF AMERICA
7 Respondent,
8

9 Appeal From the United States District Court
10 For the Southern District of California
11 Southern Division

12 APPELLANT'S OPENING BRIEF
13

14 I.

15 STATEMENT OF JURISDICTION

16 This is an appeal from a judgment of the United States
17 District Court for the Southern District of California,
18 Southern Division, adjudging appellant guilty of one count
19 of a one-count indictment charging a violation of Title 18,
20 United States Code, Section 1407, to-wit: Failure of a
21 narcotic user to register. References to the Reporter's
22 Transcript will hereinafter be designated R.T., references
23 to the Clerk's Transcript will hereinafter be designated
24 C.T., and reference to the Amended Clerk's Transcript will
25 hereinafter be designated as-A-C.T.
26

SECOND CIRCUIT

NO. 2019-01 (2)

WILLIAM EDWARD ROSE,
Appellant.

v.

UNITED STATES OF AMERICA,
Respondent.

Appeal from the United States District Court
for the Southern District of California
Southern District

APPELLANT'S BRIEF

I.

STATEMENT OF JURISDICTION

This is an appeal from a judgment of the United States
District Court for the Southern District of California,
Southern District, regarding appellant's policy of not
of a separate indictment charged a violation of 18 U.S.C.
United States Code, Section 1507, 18 U.S.C. Section 1507
appeals may be argued. References to the District's
Transcript will be made to the designated R.T., references
to the District's Transcript will be made to the designated
C.T., and references to the District's Transcript will
be made to the designated R.T.

1 Appellant was convicted following a waiver of jury
2 trial and stipulation as to the facts, of the single count
3 indictment(R.T., p. 6). On September 8, 1966, judgment was
4 entered (C.T., p. 16). A timely notice of appeal was filed
5 four days later, on September 12, 1966 (C.T., p. 17).

6 The District Court had jurisdiction pursuant to the
7 provisions of Title 18, U.S.C., Section 3231. This court
8 has jurisdiction to entertain the instant appeal from a
9 judgment under Title 28, U.S.C., Sections 1291 and 1294, and
10 Rules 37 and 39 of the Federal Rules of Criminal Procedure
11 (Title 18, U.S.C.).

12 II.

13 STATEMENT OF THE CASE

14 An indictment was returned against appellant by the
15 Grand Jury for the United States District Court, Southern
16 District of California, Southern Division, which indictment
17 was filed on July 6, 1966 (C.T., p. 3). The indictment was
18 in one count and charged in essence that on or about May 29,
19 1966, appellant, being a citizen of the United States who
20 was then "addicted to and a user of" narcotic drugs, returned
21 to and entered the United States at the Port of San Diego
22 (San Ysidro), San Diego County, without registering with a
23 Customs official, and without surrendering the certificate
24 required by law in violation of Title 18, U.S.C., Section
25 1407.
26

Appellant was thereafter arraigned and subsequently

Appellant was convicted following a return of jury trial and adjudication as to the facts, of the single count indictment (R.T., p. 8). On September 8, 1960, judgment was entered (C.T., p. 8). A timely notice of appeal was filed four days later, on September 12, 1960 (R.T., p. 17).

The District Court had jurisdiction pursuant to the provisions of Title 18, U.S.C., Section 3231. This court has jurisdiction to set aside the instant appeal from a judgment under Title 18, U.S.C., Sections 1161 and 1164, and Rules 37 and 38 of the Federal Rules of Criminal Procedure. (Title 18, U.S.C.).

II. FACTS

STATEMENT OF THE CASE

An indictment was returned against appellant by the Grand Jury for the United States District Court, Southern District of California, Southern Division, which indictment was filed on July 6, 1960 (C.T., p. 7). The indictment was in one count and charged the accused that on or about May 19, 1960, appellant, being a witness of the United States and was then "added to and a part of" various other, various and entered the United States on the part of the State (San Diego County, which indictment was returned by the District Court of Title 18, U.S.C., Section 1161, and Section 1164).

Appellant was thereafter arrested and subsequently

1 filed a Motion to Dismiss the Indictment and a Motion to
2 Strike portions of the indictment (C.T., p.4, 5), said
3 Motions being predicated on the ground that the indictment
4 charged an offense which violates the Constitution of the
5 United States in that said indictment and the statute it
6 was predicated upon contravened the Due Process provision
7 of the Fifth Amendment to the Constitution; the prohibition
8 against self-incrimination contained in the Fifth Amendment
9 to the Constitution; and the Eighth Amendment prohibition
10 against cruel and unusual punishment. Said motion also
11 requested the court to strike from the indictment that por-
12 tion which alleged that at the time of the commission of the
13 offense, defendant was "a user of" narcotic drugs, on the
14 ground that this phrase is vague and ambiguous and violative
15 of the Due Process provision of the Fifth Amendment to the
16 Constitution. A hearing was had on said motion, at the
17 conclusion of which hearing the said motion was denied and
18 the plea of not guilty was entered on behalf of appellant
19 (A.C.T. p.2).

20 On August 16, 1966, jury trial was waived and the
21 case was tried on stipulated facts (R.T., p.5, 6; C.T.,
22 p.14, 15), counsel for appellant moved for a dismissal of
23 the indictment and striking a portion of the indictment
24 which was denied, and the verdict was returned against the
25 appellant (R.T., p.6).

26 On September 8, 1966, the appellant was adjudged

1 filed a motion to dismiss the indictment and a motion to
2 strike portions of the indictment (R.T., p. 4, 5), said
3 motions being granted on the ground that the indictment
4 charged an offense which violates the Constitution of the
5 United States in that said indictment and the statute it
6 was predicated upon contravened the due process provision
7 of the Fifth Amendment to the Constitution; the provision
8 against self-incrimination contained in the Fifth Amendment
9 to the Constitution; and the Eighth Amendment prohibition
10 against cruel and unusual punishment. Said motion also
11 requested the court to strike from the indictment that por-
12 tion which alleged that at the time of the commission of the
13 offense, defendant was "a man of" certain age, as the
14 ground that this phrase is vague and ambiguous and violative
15 of the due process provision of the Fifth Amendment to the
16 Constitution. A hearing was had on said motion, at the
17 conclusion of which hearing the said motion was denied and
18 the plea of not guilty was entered on behalf of appellant.

19 (A.C.I. p. 1).

20 On August 18, 1950, jury trial was held and the
21 case was tried on stipulated facts (R.T., p. 2, 3; C.T.,
22 p. 14, 15), counsel for appellant moved for a dismissal of
23 the indictment and asking a portion of the indictment
24 which was denied, and the verdict was returned against the
25 appellant (R.T., p. 4).

26 On September 8, 1950, the appellant was adjudged

1 to be a young adult offender pursuant to the provisions of
2 Section 5010 (a) of Title 18, U.S.C., and placed on proba-
3 tion (C.T., p.16).

4 III.

5 SPECIFICATION OF ERRORS

6 1. The District Court erred in failing to strike from
7 the indictment the portion thereof alleging that defendant-
8 appellant was a "user" of narcotics.

9 2. The District Court erred in failing to dismiss
10 the indictment.

11 3. The statute under which defendant-appellant was
12 indicted, tried and sentenced, to-wit: Title 18, U.S.C.,
13 Section 1407, is unconstitutional in whole or in part when
14 applied to appellant.

15 IV

16 STATEMENT OF FACTS

17 An indictment was filed on July 6, 1966, in the
18 United States District Court, Southern District of Cali-
19 fornia, Southern Division, charging appellant of being a
20 citizen of the United States who was, on May 29, 1966,
21 "addicted to and a user of narcotic drugs", and who, upon
22 re-entering the United States at the Port of San Diego,
23 (San Ysidro), County of San Diego, failed to register with
24 a Customs official, and also failed to surrender the certi-
25 ficate required by law in violation of Title 18, U.S.C.,
26 Section 1407 (C.T., p.3).

in the young child offender movement to the provisions of
Section 2012 (a) of Title 18, U.S.C., and placed an order
showing (C.R. 7.15).
The District Court entered its order on July 11, 1960.

STATEMENT OF FACTS

The District Court entered its order on July 11, 1960, in
the instant case, finding that the defendant was a "juvenile"
and that the District Court entered its order on July 11, 1960.
The defendant.

3. The statute under which defendant was
indicted, tried and sentenced, is Title 18, U.S.C.,
Section 2012, in which it is provided that a person who
is under 18 years of age at the time of the offense shall be
treated as a juvenile.

IV

STATEMENT OF FACTS

An indictment was filed on July 8, 1960, in the
United States District Court, Southern District of New
York, charging defendant with being a
juvenile of the United States who was, on July 8, 1960,
"detained by and a user of narcotic drugs," and who, upon
re-arresting the United States at New York on July 8, 1960,
"detained by and a user of narcotic drugs," failed to register with
a customs official, and also failed to surrender the
license required by law in violation of Title 18, U.S.C.,
Section 2012 (a)(2).

1 Appellant was thereafter arraigned and subsequently
2 filed a Motion to Dismiss Indictment and Motion to Strike
3 portions of the indictment (C.T., p.4, 5), which motions
4 were predicated on the ground that the phrase "and a user"
5 was indefinite, and ambiguous, and that the indictment and
6 the statute upon which it was founded was violative of the
7 privilege against self-incrimination, of the Fifth Amend-
8 ment to the Constitution, and the prohibition against cruel
9 and unusual punishment found in the Eighth Amendment to the
10 United States Constitution (C.T., p.4, 5). A hearing was
11 had on said motions and following oral argument the motions
12 were dismissed (A.C.T., p.2).

13 On August 16, 1966, jury trial was waived and the
14 case was heard on stipulated facts and decided on the same
15 day (R.T., p.4-6). The stipulated facts (C.T., p.14, 15)
16 show that if HERBERT W. REAY, JR., was called as a witness
17 and duly sworn, he would testify that on May 29, 1966, the
18 defendant WILLIAM EDWARD ROSE, returned to and entered the
19 United States from Mexico by entering at San Ysidro (San
20 Diego) in San Diego County in the Southern Division of the
21 Southern District of California, and made said entry with-
22 out registering or surrendering the certificate as re-
23 quired by Title 18, U.S.C., Section 1407.

24 It was further stipulated and agreed that if PAUL
25 R. SALERNO, M.D., were called to testify, he would state
26 that on May 29, 1966, he observed three recently made needle

appears as defendant and respondent
in a motion to dismiss indictment and motion to return
warrant at the indictment (C.T., p. 4, 5), which motions
were granted on the ground that the process "and a writ"
was indefinite, and ambiguous, and that the indictment and
the warrant upon which it was founded was violative of the
privilege against self-incrimination, of the Fifth Amend-
ment of the Constitution, and the prohibition against cruel
and unusual punishment found in the Eighth Amendment to the
United States Constitution (C.T., p. 4, 5). A hearing was
had on said motions and following oral argument the court
was divided (C.T., p. 4, 5).
On August 18, 1956, jury trial was called and the
case was heard on stipulated facts and decided on the same
day (C.T., p. 4-5). The stipulated facts (C.T., p. 14, 15)
show that in MURDER OF MARTIN LUTHER KING, JR., was called as a witness
and jury heard, he would testify that on May 13, 1968, the
defendant WILLIAM EDWARD JONES, returned to him advised the
United States was wanted by arrested at San Antonio (San
Antonio) in San Diego County in the Western Division of the
Southern District of California, and made said entry with-
out registering or lawfully obtaining a passport as re-
quired by Title 18, U.S.C., Section 1401.
It was further stipulated and agreed that if WILLIAM
EDWARD JONES, U.S., was called as a witness, he would state
that on May 13, 1968, he observed three persons named

marks and five other needle marks upon said defendant's arms, and that it was his opinion that the said defendant was under the influence of narcotic drugs at the time of said examination.

Following the entering of the stipulated facts, appellant once again asserted the invalidity of the statute and the indictment under which defendant was being prosecuted, and asked for the court to dismiss the case. (R.T., p. 5, 6). Whereupon the judge stated:

"...this is one of the most salutary statutes we have on the books today. It has saved more people from themselves and has led to the discovery of narcotics, narcotic traffic, and without it I think we would be very hard put to enforce the law relative to importation of narcotics, and I believe that it also serves a great purpose in preventing the continued use of narcotics by persons who are apprehended, and I have previously held that the Statute is not vague or uncertain and that it is constitutional and, therefore, on the stipulation I will find the defendant guilty." (R.T., p.6).

Sentencing was thereupon held on September 8, 1966, and the defendant adjudged to be suitable for handling under the Federal Youth Correction Act, and pursuant to Title 18, U.S.C., Section 5010(a), defendants sentence was suspended and he was placed on probation for five years. (C.T., p.16).

V.

ARGUMENT

A. TITLE 18, U.S.C., SECTION 1407, IS UNCONSTITUTIONAL WHEN APPLIED TO APPELLANT IN THAT THE PHRASE "USER" IS NOT SUFFICIENTLY DEFINATE TO APPRISE

under the influence of narcotic drugs at the time he was
examined, and in the absence of any other evidence, the
jury was instructed to find in favor of the defendant.

two, and asked for the court to declare the case a "settled" case, and asked for the court to declare the case a "settled" case.

† 1983-84 අවධියේදී ගම්පහ පාලන වර්ගයට අයත් . (2) , 2 . 0

1. I find the defendant guilty." (J.E. 3-33)

and the defendant advised to be released for bonding under the Federal Youth Corrections Act, and pursuant to Title 18, U.S.C., Section 2010(a), defendant's sentence was suspended and he was placed on probation for five years.

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DATE 08-11-2011 BY 60322 UCBAW/SJS

HIM OF THE PROHIBITED CONDUCT NOR TO SUPPLY A
SUFFICIENTLY DEFINITE STANDARD TO MEASURE HIS
GUILT OR INNOCENCE.

Appellant has resisted the constitutionality of the
statute on the basis that it is vague and ambiguous from
the very beginning, having prior to plea entered a Motion
to Strike that portion of the indictment that charged him
as a "user", and continued to assert this position up to
and during trial.

The United States Supreme Court has, on numerous
occasions, struck down both Federal and State statutes, for
failure to meet an objective standard which would apprise
the public of the conduct which is proscribed. In Bouie
v. City of Columbia, 84 S.Ct. 1697 (1964), the court defined
the standard of definiteness to be applied in testing penal
statutes:

"The basic principal that a criminal statute
must give fair warning of the conduct it
makes a crime has often been recognized by
this court. As was said in United States v.
Harris, 347 U.S. 612, 617, 74 S.Ct. 806,
612, 98 L.Ed. 989,

'The constitutional requirement of
definiteness is violated by a criminal
statute that fails to give a person of
ordinary intelligence fair notice that
his contemplated conduct is forbidden
by the statute. The underlying principle
is that no man shall be held criminally
responsible for conduct which he could
not reasonably understand to be pro-
scribed.'

Thus we have struck down a state
criminal statute under the Due Process
Clause where it was not sufficiently
explicit to inform those who are subject
to it what conduct on their part will

THE UNITED STATES DEPARTMENT OF THE INTERIOR
BUREAU OF LAND MANAGEMENT
WASHINGTON, D. C. 20250

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BY THE DIRECTOR
FROM THE CHIEF OF BUREAU
SUBJECT: [illegible]
REFERENCE: [illegible]
ACTION: [illegible]

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render them liable to its penalties.'
Connally v. General Construction Company
Company, 269 U.S. 385, 391, 46 S.Ct. 126,
127, 70 L.Ed. 322.

We have recognized in such cases that a statute which either forbids or requires the doing of an act in terms so vague that men of common intelligence must necessarily guess at its meaning and differ as to its application violates the first essential of due process of law' *ibid.*, and that 'No one may be required at peril of life, liberty or property to speculate as to the meaning of penal statutes. All are entitled to be informed as to what the State commands or forbids'. *Lanzetta v. New Jersey*, 306 U.S. 451, 453, 59 S.Ct. 618, 619, 83 L.Ed. 888."

The controlling case in determining the constitutionality of Title 18, U.S.C., Section 1407, *United States v. Eramdjian*, 155 F. Supp. 914, held that the term "addict" was sufficiently definite to constitute an objective standard. However, that case specifically left open the question of whether the phrase "user" was unconstitutionally vague.

Appellant submits that the phrase "user" is not sufficiently precise to allow one to predicate his behaviour upon its meaning. Use is in essence an act but the phrase "uses" applied in Title 18, U.S.C., Section 1407, indicates that some sort of consistent behaviour, short of addiction, is the basis of its classification. Thus the problem that confronts one is whether a single use requires registration, or whether the statute is aimed at those who have used narcotic drugs many times and who are

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We have recognized in such cases that a
 estimate which either includes or excludes
 the thing of no net in terms as regards
 that one of common intelligence must agree
 withly given in its meaning and either as
 no its application includes the thing
 essential of the process of law, 'child,
 and that the law may be required at point
 of law, liberty or property to appearance
 as to the meaning of general statutes. All
 are entitled to be taken on in what the
 State demands of individuals'.
 New Jersey, 100 U.S. 413, 25 S.Ct.
 110, 65 L.Ed. 907.

The controlling issue in determining the correct
 view of this is, I.R.C. Section 107, which states
 "Institution, 122 F. Supp. 214, held that the term 'admission'
 was sufficiently definite to constitute an objective standard.
 and. However, that case specifically left open the question
 of whether the phrase 'admission' was unambiguously

Appellant submits that the phrase "may" is not sufficiently precise to allow use to graduate his behavior upon the meaning. There is in essence no set rule the phrase "may" applied in Title 18, U.S.C., Section 1507 indicates that some sort of conscious behavior, short of addition, in the sense of its classification. Thus the phrase that conduct can be deemed a crime was negative obligation, or denied the state is mind in those who have used conduct these many times and are

1 in danger of becoming addicted thereto. Therefore, the
2 Court, the jury and the public at large are left to con-
3 jecture as to the precise meaning of the term and as to
4 whether their present or contemplated conduct falls
5 within the prohibitions contained in the statute.

6 It would further seem that the question of vagueness
7 takes on added significance when the conduct proscribed
8 directly infringes upon the exercise of personal freedoms
9 which are protected by the Constitution of the United
10 States. Thus, recognizing that the right to travel is a
11 personal freedom guaranteed to all citizens through the
12 Fifth Amendment, an attempt to curtail the exercise of
13 this right must not only represent a valid and vital
14 interest of national security, but it must also represent
15 a clear and careful articulation of such legislative
16 power.

17 B. REQUIRING APPELLANT ON ENTERING AND LEAVING
18 THE UNITED STATES TO ADMIT, UNDER PENALTY OF
19 THREATENED IMPRISONMENT, THAT HE IS A USER
20 OF OR ADDICTED TO NARCOTICS CONTRAVENES THE
21 RIGHTS GUARANTEED TO HIM BY THE CONSTITUTION.

22 The full range of liberties guaranteed under the
23 Fifth Amendment have never been enumerated nor would it
24 seem reasonable to do so. However, the concept of the
25 right to travel has been recognized as an essential
26 element of the Fifth Amendment freedoms. In Kent v. Dulles,
357 U.S. 116 (1958), the court stated that:

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in danger of becoming obsolete. However, the Court, the jury and the public at large are left to determine as to the proper meaning of the law and as to whether their present or contemplated conduct falls within the prohibition contained in the statute.

It would further seem that the question of whether there are added difficulties when the conduct prohibited directly infringes upon the exercise of personal freedoms which are protected by the Constitution of the United States. Thus, contemplated when the right to travel in a personal freedom protected as well as when through the Fifth Amendment, an attempt to curtail the exercise of this right must not only represent a valid and vital interest of national necessity, but it must also represent a clear and certain violation of such legislative power.

B. RECEIVING REFUGEE OR RETURNING AND LEAVING THE UNITED STATES TO ADMIT UNDER REFUGEE OR TRAVELING DOCUMENTS THAT HE IS A MEMBER OF OR ASSISTING TO MEMBERS OF ORGANIZATIONS WHOSE RIGHTS GUARANTEED TO HIM BY THE CONSTITUTION.

The full scope of legislative protection under the Fifth Amendment have never been determined for while it seems reasonable to do so. However, the remedy of the right to travel has been recognized as an essential

element of certain fundamental freedoms. In Yan Y. Gold 357 U.S. 106 (1958), the Court held that

1 "The right to travel is a part of the
2 liberty of which the citizen cannot be
3 deprived without due process of law
4 under the Fifth Amendment....
5 Freedom of movement across frontiers in
6 either direction and inside frontiers
7 as well, was a part of our heritage.
8 Travel abroad, like travel within the
9 country maybe as close to the heart of
10 the individual as the choice of what he
11 eats or wears or reads. Freedom of move-
12 ment is basic in our scheme of values."

13 It should be noted that a month after the decision
14 in Kent v. Dulles, supra, President Eisenhower issued a
15 message to Congress stating that:

16 "Any limitation on the right to travel
17 can only be tolerated in terms of over-
18 riding requirements of our national
19 security."

20 Message from the President, House Docu-
21 ment No. 417, 85th Congress, 2nd Session;
22 104 Congressional Record 13046.

23 Recognizing that the liberties guaranteed under the
24 Fifth Amendment cannot be restricted without due process of
25 law, the question remains what statutory standards are
26 such that they avoid the claim of unreasonable and arbitrary use of power. In Aptheker v. Secretary of State,
378 U.S. 500 (1964), a case holding that a federal statute prohibiting the issuance of a passport to a member of the Communist Party was unconstitutional in that it unduly restricted the fundamental liberties of a citizen to travel, the court said about the statute therein that:

"The section, judged by its plain import

The right to travel is a part of the
 liberty of which the citizen cannot be
 deprived without due process of law.
 Under the Fifth Amendment....
 Freedom of movement across frontiers is
 either direction and inside frontiers
 as well, was a part of our heritage.
 Travel abroad, like travel within the
 country, may be done on the basis of
 the individual as the basis of what he
 does or does not do. Freedom of move-
 ment is basic in our system of values.

It should be noted that a month after the decision
 in Frank v. Dulles, Board, President Eisenhower issued a
 message to Congress stating that:
 "Any limitation on the right to travel
 can only be justified in terms of over-
 riding requirements of our national
 security."
Message from the President, House Repor-
and No. 333 Congress, 1st Session,
1st Congressional Record, 1954.

Recognizing that the historic government under the
 Fifth Amendment cannot be restricted without due process
 law, the question remains what statutory standards are
 such that they would be able to distinguish and with-
 stand use of power. In Roberts v. Secretary of State,
 378 U.S. 552 (1964), a man holding that a travel
 statute prohibiting the issuance of a passport to a mem-
 ber of the Communist Party was unconstitutional in that
 it unduly restricted the fundamental liberties of a
 citizen to travel, the court said that the statute
 "The statute, judged by its plain language

1 and by the substantive evil which Congress
2 sought to control, sweeps too widely and
3 too indiscriminately across the liberty
4 guaranteed in the Fifth Amendment. The
5 prohibition against travel is supported
6 only by a tenuous relationship between
7 the fact of organizational membership
8 and the activity Congress sought to pro-
9 scribe. The broad and enveloping pro-
10 hibition indiscriminately excludes plainly
11 relevant considerations such as the indi-
12 viduals knowledge, activity, commitment,
13 and purposes in and places for travel.
14 The section therefore is patently not a
15 regulation 'narrowly drawn to prevent
16 the supposed evil', cf. Cantwell v.
17 Connecticut, 310 U.S., at 307, yet here
18 as elsewhere, precision must be the
19 touchstone of legislation so affecting
20 basic freedoms, N.A.A.C.P. v. Button,
21 371 U.S. at 438.

22 Assuming that there is a vital national policy to
23 be accomplished through the control of narcotic traffic,
24 it is clear that such interest can only be achieved
25 through a statute that is precisely and narrowly drawn
26 such that the freedoms guaranteed to each citizen through
the Fifth Amendment are not infringed by the broad and
far reaching consequences of an inarticulate statute. It
is clear that Title 18, U.S.C., Section 1407, prohibits
all travel outside the United States to any place for
any reason, unless one, who is within its classification,
has registered with a Customs official. Such registra-
tion bears no relationship to the activity or purposes
contemplated by the prospective traveler during his
journey and its only possible intent is to facilitate
the surveillance and observation of those who might

and by the representative will which Congress
ought to exercise, average the rights and
the fundamental rights of the liberty
guaranteed in the Bill of Rights. The
protection against arrest is guaranteed
only by a common relationship between
the fact of organizational membership
and the activity Congress sought to pro-
hibit. The broad and sweeping power
to limit individual rights and/or affect
relevant constitutional rights as the indi-
vidual knowledge, activity, membership,
and purpose in and place for news.
The action therefore is generally not a
regulation, merely given to news
the supposed will, of Central v.
Government, 316 U.S. 445, 451, 452, 453
in Congress, prohibition was to be
conclusion of legislation to affecting
state freedom, B.A.A.F. v. Texas,
311 U.S. at 430.

According that there is a vital national policy to
be accomplished through the control of national health,
it is clear that such interest and only be achieved
through a statute that is directly and strongly done
with that the freedom guaranteed to each citizen through
the Bill of Rights and not infringed by the state and
the reaching conclusion of an individual citizen. It
is clear that this is, B.A.A.F. v. Texas, 311 U.S. 445, 451, 452, 453, 454, 455, 456, 457, 458, 459, 460, 461, 462, 463, 464, 465, 466, 467, 468, 469, 470, 471, 472, 473, 474, 475, 476, 477, 478, 479, 480, 481, 482, 483, 484, 485, 486, 487, 488, 489, 490, 491, 492, 493, 494, 495, 496, 497, 498, 499, 500, 501, 502, 503, 504, 505, 506, 507, 508, 509, 510, 511, 512, 513, 514, 515, 516, 517, 518, 519, 520, 521, 522, 523, 524, 525, 526, 527, 528, 529, 530, 531, 532, 533, 534, 535, 536, 537, 538, 539, 540, 541, 542, 543, 544, 545, 546, 547, 548, 549, 550, 551, 552, 553, 554, 555, 556, 557, 558, 559, 560, 561, 562, 563, 564, 565, 566, 567, 568, 569, 570, 571, 572, 573, 574, 575, 576, 577, 578, 579, 580, 581, 582, 583, 584, 585, 586, 587, 588, 589, 590, 591, 592, 593, 594, 595, 596, 597, 598, 599, 600, 601, 602, 603, 604, 605, 606, 607, 608, 609, 610, 611, 612, 613, 614, 615, 616, 617, 618, 619, 620, 621, 622, 623, 624, 625, 626, 627, 628, 629, 630, 631, 632, 633, 634, 635, 636, 637, 638, 639, 640, 641, 642, 643, 644, 645, 646, 647, 648, 649, 650, 651, 652, 653, 654, 655, 656, 657, 658, 659, 660, 661, 662, 663, 664, 665, 666, 667, 668, 669, 670, 671, 672, 673, 674, 675, 676, 677, 678, 679, 680, 681, 682, 683, 684, 685, 686, 687, 688, 689, 690, 691, 692, 693, 694, 695, 696, 697, 698, 699, 700, 701, 702, 703, 704, 705, 706, 707, 708, 709, 710, 711, 712, 713, 714, 715, 716, 717, 718, 719, 720, 721, 722, 723, 724, 725, 726, 727, 728, 729, 730, 731, 732, 733, 734, 735, 736, 737, 738, 739, 740, 741, 742, 743, 744, 745, 746, 747, 748, 749, 750, 751, 752, 753, 754, 755, 756, 757, 758, 759, 760, 761, 762, 763, 764, 765, 766, 767, 768, 769, 770, 771, 772, 773, 774, 775, 776, 777, 778, 779, 780, 781, 782, 783, 784, 785, 786, 787, 788, 789, 790, 791, 792, 793, 794, 795, 796, 797, 798, 799, 800, 801, 802, 803, 804, 805, 806, 807, 808, 809, 810, 811, 812, 813, 814, 815, 816, 817, 818, 819, 820, 821, 822, 823, 824, 825, 826, 827, 828, 829, 830, 831, 832, 833, 834, 835, 836, 837, 838, 839, 840, 841, 842, 843, 844, 845, 846, 847, 848, 849, 850, 851, 852, 853, 854, 855, 856, 857, 858, 859, 860, 861, 862, 863, 864, 865, 866, 867, 868, 869, 870, 871, 872, 873, 874, 875, 876, 877, 878, 879, 880, 881, 882, 883, 884, 885, 886, 887, 888, 889, 890, 891, 892, 893, 894, 895, 896, 897, 898, 899, 900, 901, 902, 903, 904, 905, 906, 907, 908, 909, 910, 911, 912, 913, 914, 915, 916, 917, 918, 919, 920, 921, 922, 923, 924, 925, 926, 927, 928, 929, 930, 931, 932, 933, 934, 935, 936, 937, 938, 939, 940, 941, 942, 943, 944, 945, 946, 947, 948, 949, 950, 951, 952, 953, 954, 955, 956, 957, 958, 959, 960, 961, 962, 963, 964, 965, 966, 967, 968, 969, 970, 971, 972, 973, 974, 975, 976, 977, 978, 979, 980, 981, 982, 983, 984, 985, 986, 987, 988, 989, 990, 991, 992, 993, 994, 995, 996, 997, 998, 999, 1000.

1 possibly be involved in the illicit international traffic
2 in drugs.

3 The trial judge indicated that this statute leads
4 to the discovery of narcotics and narcotic traffic as well
5 as providing a method whereby the Government helps narcotic
6 users or addicts to help themselves (R.T., p.6). Accepting
7 each justification for the statute on its own merits, it
8 may readily be seen that none of the rationale is an
9 acceptable nor a constitutional basis for the implementa-
10 tion of such a statute. Accepting the trial judge's state-
11 ment that the statute is a tool in the rehabilitation of
12 narcotic offenders, it must be noted that travel by the
13 restricted class of persons is not completely eliminated,
14 since travel is only invalid for those persons who fail
15 to register with a Customs official. Following registra-
16 tion, one may travel as he pleases indulging in any type
17 of conduct he pleases, and surely, if one is addicted to
18 narcotics, the mere imposition of the requirement of
19 registration is not going to cause him to forego such
20 addiction. Therefore, the only meaning attributable to
21 such a comment is that the imprisonment for failure to
22 register as provided in the statute will initiate a with-
23 drawl and complete recovery from the addiction to
24 narcotics.

25 The statute is plainly penal in nature and rehabilita-
26 tion of narcotic offenders through imprisonment is

possibly be involved in the future international system
in force.

The total judge
as the discovery of scientific and economic results as well
as providing a method whereby the Government might control
means of action by legal measures (L.I., 2.4). However,
such justification for the statute on its own merits, as
may readily be seen that most of the reasons for its
enactment are a result of the fact that the Government
has of such a nature. According to the trial judge's state-
ment that the statute is a part of the legislation of
national character, it may be noted that most of the
enacted laws of persons is not completely adequate,
which would be only invalid for those persons who will
be required with a certain object. Following various
laws, one may travel as the person involved in any type
of motion in person, and usually, it may be applied to
national, the two legislation of the requirement of
legislation is not going to come from the fact that
national. Therefore, the only way to make national as
such a person is that the requirement for laws to
be applied as provided in the statute will involve a work-
load and require persons from the addition to
national.

The statute is a fairly good measure and establish-
ment of national character through legislation is

1 patently violative of the Eighth Amendment of the Consti-
2 tution prohibiting cruel and unusual punishment. This
3 was recognized by the Supreme Court of the United States
4 in Robinson v. California, 307 U.S. 660 (1962) where the
5 court, in holding the penal provisions of Section
6 11721 of the California Health & Safety Code invalid,
7 stated:

8 "It is unlikely that any State at this
9 moment in history would attempt to make
10 it a criminal offense for a person to be
11 mentally ill, or a leper, or to be
12 afflicted with a venereal disease. A
13 State might determine that the general
14 health and welfare require that victims
15 of these and other human afflictions be
16 dealt with by compulsory treatment,
17 involving quarantine, confinement or
18 sequestration, but in light of contem-
19 porary human knowledge, a law which made
20 a criminal offense of such a disease
21 would doubtless be universally thought
22 to be an infliction of cruel and unusual
23 punishment in violation of the Eighth
24 and Fourteenth Amendment.

17 We cannot but consider the statute
18 before us as of the same category. In
19 this Court counsel for the State recog-
20 nized that narcotic addiction is an ill-
21 ness. Indeed, it is apparently an ill-
22 ness which may be contracted innocently
23 or involuntarily. We hold that a State
24 law which imprisons a person thus afflic-
25 ted as a criminal, even though he has
26 never touched any narcotic drug within
the State or been guilty of any irregular
behaviour there, inflicts cruel and
unusual punishment in violation of the
Fourteenth Amendment.

25 Clearly then any attempt to characterize the statute
26 as rehabilitation-oriented would meet the mandate that

recently violated of the High School of the County
 having provided every one of the students. This
 was recognized by the High School of the County
 in Reynolds v. California, 207 U.S. 202 (1902) where the
 Court, in holding that the general provisions of section
 1151 of the California Penal Code invalid,

"It is readily seen that there is this
 element in every case which is not
 is a criminal offense for which to be
 essentially ill, or a larger, or to be
 attended with a permanent injury. A
 state which determines that the general
 health and welfare require that persons
 of sound and other sane persons be
 dealt with by compulsory treatment,
 involving restriction, confinement or
 sequestration, for the sake of public
 safety is not liable, a law which makes
 a criminal offense of such a nature
 would doubtless be unduly harsh
 to be an infliction of great and unusual
 punishment in violation of the High
 School Amendment.

We cannot but consider the statute
 below as one of the same category. In
 this Court several of the same theory
 have been decided and the result is an ill-
 defined and uncertain addition to the
 law. Indeed, it is especially in the
 cases which may be considered as
 or involuntarily. We have seen a statute
 in which requires a person to be added
 to an institution, even though he has
 never reached any mental state which
 the State has been guilty of any violation
 beyond that, which would be
 mental punishment in violation of the
 Fourteenth Amendment.

Clearly then any attempt to characterize the statute
 as punishment would be in error. The statute that

1 penal provisions for narcotics addiction or use are violative
2 of the constitutional provision against cruel and unusual
3 punishment.

4 However, if the statute is to be construed as
5 attempting to prevent the importation of narcotics in order
6 to protect the public at large from the evils accompanying
7 said introduction, then the statute violates the provisions
8 of the Fifth Amendment of the Constitution that provides
9 that no person shall be required to incriminate himself. It
10 appears that the purposes ascribed to the statute in this
11 sense could be carried out only by utilizing the registra-
12 tion in such a manner that further observation and sur-
13 veillance of the registrant is possible.

14 The case of United States v. Eramdjian, 155 F.Supp.
15 914, which held that the statute now in question was con-
16 stitutional, discussed the problem of self-incrimination
17 involved in registering pursuant to Title 18, U.S.C.,
18 Section 1407 and stated that:

19 "The privilege against self-incrimina-
20 tion does not extend to matters which
21 might tend to incriminate a witness
22 under the laws of another jurisdiction.
23 United States v. Murdock (1931), 284
24 U.S. 141, 149, 52 S.Ct. 63, 76 L.Ed.
25 210; Feldman v. United States, (1944)
26 322 U.S. 487, 64 S.Ct. 1082, 88 L.Ed.
1408.

27 This same reasoning was relied upon in other cases
28 questioning the constitutionality of Title 18, U.S.C.,
29 Section 1407, namely Reyes v. United States, 258 Fed.2d 744

general provisions for controlling activities on any one vessel
 of the constitutional powers relating to the crew and passengers
 and the vessel.
 However, it is the object of the Convention to be concerned as
 attempting to prevent the introduction of diseases in order
 to protect the public as large as the well accompanying
 and introduction, then the statute violated the provisions
 of the Fifth Amendment of the Constitution that provides
 that no person shall be deprived of his property without just
 compensation. That the purpose of the statute in this
 sense could be carried out only by violating the Fifth Amendment
 then in such a narrow case further observation and support
 of the provision is possible.

The case of United States v. Krumholz, 125 F.2d 900
 914, which held that the statute was in violation of the Fifth
 Amendment, affirmed the finding of the Fifth Amendment
 involved in requiring payment to Title 16, U.S.C.
 Section 1407 and against that.

The petition against the introduction
 of the case was based on the fact that
 the law of the United States is a
 matter of the law of the United States.
 United States v. Krumholz, 125 F.2d 900
 914, 100 F.2d 900, 100 F.2d 900
 100 F.2d 900, 100 F.2d 900, 100 F.2d 900
 100 F.2d 900, 100 F.2d 900, 100 F.2d 900

This case concerning the Fifth Amendment to the Constitution
 of the United States, U.S.C., U.S.C., U.S.C.
 Section 1407, namely United States, 125 F.2d 900

1 (1958), and Palmas v. United States, 261 Fed 2d 93 (1958).
2 It also should be noted that these same cases were relied
3 upon by the United States Attorney General in opposing the
4 appellant's Motion to Dismiss the Indictment (C.T., p. 13).

5 However, the case of Murphy v. Waterfront Com-
6 missioner of New York, 378 U.S. 52 (1964), held that the
7 privilege against self-incrimination protects a person
8 against incriminating himself under the laws of a
9 sovereign different from that compelling the incriminating
10 statement. The court therein stated:

11 "We reject-as unsupported by history or
12 policy-the deviation from that
13 construction only recently adopted by
14 this Court in United States v. Murdock,
15 supra, and Feldman v. United States,
16 supra. We hold that the constitutional
17 privilege against self-incrimination
18 protects a state witness against
19 incrimination under federal as well as
20 state law and a federal witness against
21 incrimination under state as well as
22 federal law.

23 Although the court in United States v. Eramdjian,
24 155 F. Supp. 914 (1957), interposed that no criminal case
25 was pending and that no prosecution can be based upon reg-
26 istration alone, this patently begs the question in light
of the decision handed down by this very court in Russell
v. United States, 306 Fed 2d 402 (9th Cir., 1962). In
striking down a portion of the Federal Firearms Act as
being violative of the privilege against self-incrimination,
the court stated:

(JF9I) hoo ,v am/vr baioB .v ootob IAO ,et no det JAF

It also should be noted that these same cases were killed

open by the United States Attorney General in response to

Appellant's Motion to Withdraw the Indictment (C.Y., p. 12)

However, the case of Smith v. Richardson has

Minister of New York, 275 U.S. 22 (1944), said that the

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against terminating himself under the law of a

...the fact that the ...

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Alstom and the Court in United States v. Alstom

was identical to that observed with the ATR mode. The

was possible and that no cooperation was to be had from the

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being released at the privilege against self-incrimination.

1 "It has been held that the privilege
2 against self-incrimination extends to
3 information which would furnish a link
4 in the chain of evidence needed to
5 prosecute the claimant for a federal
6 crime. Hoffman v. United States, 341
7 U.S. 479, 486, 71 S.Ct. 814, 95 L.Ed.
8 1118. This being so, it cannot be
9 doubted that the privilege extends to
10 information which, by operation of
11 statute, prima facie establishes guilt.
12 The fact that, under stated circum-
stances, the registrant may be able to
convince the jury that his possession
was not in violation of the Act, is
immaterial. The privilege may be
claimed by one who is innocent but who
reasonably could fear that disclosure
of the information would result in
criminal charges against which he
would have to defend himself. See
Blau v. United States, 340 U.S. 159,
161, 71 S.Ct. 223, 95 L.Ed. 170."

13 Similarly the United States Supreme Court held in
14 Hoffman v. United States, 341 U.S. 479, 487, that:

15 "To sustain the privilege, it need
16 only be evident from the impli-
17 cations of the question, in the
18 setting in which it is asked, that a
19 responsive answer to the question or
an explanation of why it cannot be
answered might be dangerous because
injurious disclosure could result."

20 The court in United States v. Eremdjian, 155 F.
21 Supp. 914 (1957), likened registration pursuant to Title
22 18, U.S.C., Section 1407, to the filing of income tax
23 returns in that there was no threat of prosecution, nor
24 a subpoena or a court order compelling registration, and
25 that the only possible coercion was compliance with the
26 law. However, Albertson and Proctor v. Subversive

that the only possible context was comparison with the

a subpoena or a court order compelling registration, and

return to that there was no threat of punishment, nor

19, U.S.C. Section 1007, or the filing of income tax

2009. 91A (1997), although registration pursuant to this

The case in United States v. Law, 122 F.

information disclosure could result."

an explanation of why it cannot be

requested answer to the question of

whether it is a test, that is

content of the question, in the

only as evident from the facts.

To sustain the privilege, it need

Bellman v. United States, 341 U.S. 411, 1951

Similarly the United States Supreme Court said in

194, 11 S.Ct. 110, 130 U.S. 110.

194, 11 S.Ct. 110, 130 U.S. 110.

194, 11 S.Ct. 110, 130 U.S. 110.

194, 11 S.Ct. 110, 130 U.S. 110.

194, 11 S.Ct. 110, 130 U.S. 110.

194, 11 S.Ct. 110, 130 U.S. 110.

194, 11 S.Ct. 110, 130 U.S. 110.

194, 11 S.Ct. 110, 130 U.S. 110.

194, 11 S.Ct. 110, 130 U.S. 110.

194, 11 S.Ct. 110, 130 U.S. 110.

1 Activities Control Board, 382 U.S. 70 (1965), in
2 striking down the requirement that individual members of
3 the Communist Party must register, stated that:

4 "...if the admission cannot be
5 compelled in oral testimony, we do
6 not see how compulsion in writing makes
7 a difference for constitutional
8 purposes."

9 ...

10 "...the question in the income tax
11 return were neutral on their face and
12 directed at the public at large, but
13 here they are directed at a highly
14 selective group inherently suspect of
15 criminal activities. Petitioners
16 claims are not asserted in an essen-
17 tially non-criminal and regulatory
18 area of inquiry, but against an in-
19 quiry in an area permeated with
20 criminal statutes, where response to
21 any of the forms questions in context
22 might involve the petitioners in the
23 admission of a crucial element of a
24 crime."

25 This case went on to hold that the mere fact that the
26 admission would provide the authorities with an in-
27 vestigatory lead and would not of itself be a confession
28 or admission of criminal activity, it would be sufficient
29 to strike the statute requiring such registration.

30 In view of the Murphy v. Waterfront Com-
31 missioner of New York, 378 U.S. 52 (1964), it would
32 therefore appear that no statement made to either federal
33 or state authorities may be used which would furnish an
34 investigatory lead or an element or link in the chain of

stating that the government has indicated support of
the Communist Party must register, stated that:

"...in the absence of
competition in the election, we
and our competition in the election
a difference for constitutional
purposes."

"...the provision in the law
which would require the party to
register at the polls is a highly
basic right and should be a highly
effective means of ensuring
effective participation. Furthermore,
claims are not made that the
party is not a party and therefore
not a party, but should be in-
cluded in an election with
other parties, which would be
any of the other parties in the
right to have the party in the
election of a special interest of
the party."

This case was on the basis that the party had the
admission would provide the authorities with the
necessary lead and would not of itself be a condition
or admission of criminal activity, it would be sufficient
to enable the necessary reporting and registration.

In view of the People v. [redacted]

decision of New York, 370 U.S. 31 (1962), it would

therefore appear that no statement made to either federal
or state authorities may be used which would furnish an
investigative lead or as evidence or lead in the case of

1 evidence needed to prosecute a party for either a federal
2 or state crime, without granting the declarant complete
3 immunity.

4 The mandate of the Fifth Amendment of the Const-
5 itution is clear- no man shall be compelled to be a wit-
6 ness against himself. The requirement of registration
7 pursuant to Title 18, U.S.C., Section 1407, clearly vio-
8 lates this constitutional command. One need look no
9 further than the federal law to observe that registration
10 provides the authorities with either a crucial element
11 of a crime, a link in the chain of evidence needed to
12 prosecute, or an investigatory lead in pursuit of such
13 prosecution.

14 There are various manifestations of disobedience
15 to Title 18, U.S.C., Section 1407, comprised of the
16 following:

- 17 1-Attempting to leave the United States without
18 registering;
- 19 2-Leaving the United States without registering;
- 20 3-Attempting to enter the United States without
21 registering;
- 22 4-Entering the United States without registering;
- 23 5-Attempting to Enter the United States without
24 surrendering the registration certificate; and
- 25 6-Entering the United States without surrendering

...the ... of ...

[illegible]

Following:

6-Attempting to leave the United States without registration;
7-Attempting to enter the United States without registration;
8-Attempting to leave the United States without registration;
9-Attempting to enter the United States without registration;
10-Attempting to leave the United States without registration;
11-Attempting to enter the United States without registration;
12-Attempting to leave the United States without registration;
13-Attempting to enter the United States without registration;
14-Attempting to leave the United States without registration;
15-Attempting to enter the United States without registration;

the registration certificate.

Thus, an admission and registration as an addict and a user of narcotics upon entering the United States would in turn entail an admission of attempting to and leaving the United States without registering subjecting one to the penalties imposed by the statute under discussion. Also, it must be noted that once a party has registered, past records could reveal that the party in question has failed to register on other occasions when he left the country.

Other Federal statutes also must be cited in that registration pursuant to Title 18, U.S.C., Section 1407, would provide the Federal authorities with vital evidence in prosecuting actions thereunder.

Title 21, U.S.C., Section 174 providing punishment for smuggling heroin across international borders, and Title 21, U.S.C., Section 178, providing for punishment for being in possession of opium while crossing international borders, are examples of statutes under which appellant may be convicted following registration at an international border. Numerous cases considered in this court have shown that government attorneys rely on use or addiction to show knowledge of the presence of contraband in a vehicle. It appears inescapable that the use of registration in this manner is a clear violation of the principle established by this court in Russell v. United States, 306 F.2d 402 (9th Cir., 1962).

Thus, an admission and registration as an addict and a
 case of narcotics upon entering the United States would be
 down until an admission of attempting to and leaving the
 United States without registering accordingly as to the
 penalties imposed by the statute under discussion. Also, it
 must be noted that once a party has registered, past records
 could reveal that the party in question has failed to
 register on other occasions when he left the country.
 Other Federal statutes also must be cited in that
 registration pursuant to Title 18, U.S.C., Section 1407,
 would provide the Federal authorities with vital evidence
 in prosecuting actions thereunder.

Title 18, U.S.C., Section 174 providing penalties
 for smuggling persons across international borders, and
 Title 18, U.S.C., Section 178, providing for penalties
 for being in possession of arms while crossing international
 borders, are examples of statutes under which applicant may
 be convicted following registration as an international
 border. Numerous cases considered in this court have
 shown that Government attorneys rely on use of registration
 to show knowledge of the presence of contraband in a vehicle.
 It appears inconceivable that the use of registration in this
 manner is a clear violation of the principle established
 by this court in Rosen v. United States, 345 F.2d 127
 (7th Cir., 1965).

1 There are a number of California statutes which
2 present danger to one who registers at the international
3 border, the most obvious of which is Section 11721 of the
4 California Health and Safety Code, which provides for
5 punishment in the event that one is found to be using or
6 under the influence, or addicted to, the use of narcotics.
7 The prerequisite to compulsory registration at the border
8 is that one be a user of or addicted to narcotic drugs;
9 thus registration provides an admission of a crime under
10 the California law and subjects the registrant to the
11 highly probable circumstance of being prosecuted for
12 obeying the command of the law of another jurisdiction.
13 This is purely and simply a direct violation of the principle
14 established in Murphy v. Waterfront Commissioner of New
15 York Harbor, 378 U.S. 52 (1964).

16 Another state prosecution which might emanate from
17 registration is a violation of Section 11500 of the
18 California Health and Safety Code, which provides for
19 imprisonment of up to 10 years in the state prison for
20 possession of narcotics. Registration entails an admission
21 of either use of or addiction to, narcotics and although
22 the registration itself does not admit the possession of
23 narcotics, it does supply the authorities with an investi-
24 gatory lead which fact is in direct violation of the rules
25 established in Albertson and Proctor v. Subversive
26 Activities Control Board 382 U.S. 70 (1965).

There are a number of California statutes which
 provide damage to one who registers at the International
 border, the most obvious of which is Section 1111 of the
 California Health and Safety Code, which provides for
 punishment in the event that one is found to be using or
 under the influence, or addicted to, the use of narcotics.
 The provisions for compulsory registration at the border
 is that one be a user of or addicted to narcotic drugs;
 that registration provides an admission of a crime under
 the California law and subjects the registrant to the
 highly probable circumstance of being prosecuted for
 obeying the command of the law of another jurisdiction.
 This is purely and simply a direct violation of the principle
 established in Perkins v. United States (consolidation of two
Yates cases, 375 U.S. 53 (1964)).

Another action prosecution which might ensue from
 registration is a violation of Section 1112 of the
 California Health and Safety Code, which provides for
 imprisonment of up to 10 years in the state prison for
 possession of narcotics. Registration entails no admission
 of either use or an addiction to, narcotics and although
 the registration itself does not admit the possession of
 narcotics, it does imply the admission when an investi-
 gator finds which fact is a direct violation of the rules
 established in Alperin and Foster v. Subversive
Activities Control Board 381 U.S. 70 (1965).

1 Section 23105 of the California Vehicle Code presents
2 another danger to one who registers at the international
3 border. This particular statute provides for prosecution
4 for driving a vehicle while being addicted to narcotics. It
5 seems highly possible that registration would provide the
6 California authorities with a vital element in their investi-
7 gatory procedures subjecting appellant to a risk which
8 violates the principles adopted by the United States
9 Supreme Court.

10 Perhaps the greatest danger confronting appellant
11 had he registered was a proceeding under Section 3100, et
12 seq. of the California Welfare and Institutions Code
13 (formerly Sections 6500, et seq., of the California Penal
14 Code). This Section provides that a person not charged
15 with a crime may be involuntarily committed to a state
16 facility for the treatment of narcotic addiction for a
17 period up to 10 years. Since the incarceration is involun-
18 tary, it seems highly unrealistic to assert that a person
19 could be so institutionalized without providing him with
20 the full measure of his constitutional rights. Although
21 the California Supreme Court has upheld the constitutional-
22 ity of the statute providing for involuntary commitment
23 of persons not charged with a crime, that court has also
24 recognized that there are numerous safeguards for one in
25 such a proceeding, including compulsory arraignment, the
26 right to have counsel appointed if the respondent be an

Section 2105 of the California Vehicle Code provides
 another danger to one who registers at the International
 border. This particular statute provides for prosecution
 for driving a vehicle while being added to a register. It
 seems highly probable that registration would provide the
 California authorities with a great amount of their information
 about persons who are being added to a list which
 violates the principles espoused by the United States
 Supreme Court.

Section 2106 of the California Vehicle Code provides
 that no person shall be prosecuted under Section 2105, or
 any other California law, for failing to register a
 vehicle, if the person is a member of the California National
 Guard. This statute provides that a person not charged
 with a crime may be lawfully arrested as a state
 facility for the treatment of mental patients for a
 period of up to 90 days. Since the investigation is involun-
 tary, it seems highly probable that a person
 could be so institutionalized without providing him with
 the full measure of his constitutional rights. Although
 the California Supreme Court has upheld the constitutionality
 of the statute providing for involuntary commitment
 of persons not charged with a crime, that court has also
 recognized that there are serious safeguards for use in
 such a proceeding, including compulsory examination, the
 right to have counsel appointed if the respondent be an

1 indigent and the right to be personally present at all
2 stages of the proceedings. In *People v. Victor*, 42 Cal.
3 Rptr. 199 (1965), the California Supreme Court, in discussing
4 the rights of one faced with possible commitment to a
5 state institution, made the following pertinent observations:

6 "...In an earlier stage of the *Gross* case
7 (*Gross v. Superior Court*) (1954) 42 Cal.2d
8 816, 821 (5a-5b), 270 P.2d 1025), the
9 petitioners sought mandate to compel pre-
10 paration at the state's expense of trans-
11 cripts of the proceeding in which he was
12 adjudged a sexual psychopath. We granted
13 the relief prayed for, reasoning as follows:
14 "The proceeding is not strictly a criminal
15 case... yet it is to be noted it has some
16 of the features pertinent to such cases.
17 The state is defendant's opponent. The one
18 sought to be declared a sexual psychopath
19 is entitled to bail pending determination.
20 [Citations]. He is entitled to be present
21 at the hearing and if he has no counsel the
22 court may appoint one for him or order the
23 public defender to serve. [Citations]. His
24 liberty is at stake. Since those things
25 are matters pertaining to the protection
26 and rights of a person similar to one
involved in a criminal case we believe he
falls within the terms of Section 69952
of the Government Code [providing for pay-
ment of transcript fees out of the county
treasury]. See in *Re Paiva*, 31 Cal.2d
503, [190 P.2d 604]; *People v. Smith*, 34
Cal.2d 449 [211 P.2d 361]. Similar con-
siderations obtain here and lead us to the
same conclusion, i.e., that persons in-
voluntarily committed to the custody of
the Director of Corrections under this
program have the right to a free transcript
on an appeal from the order of commitment."

24 Therefore, although the proceeding is neither wholly
25 penal nor wholly civil, the courts have recognized that the
26 proceeding is of such a nature that rights afforded to one

the right to be personally present at all
stages of the proceedings. In *Scott v. State*, 199
Tex. 199 (1999), the defendant argued that in his
case the right to be present was violated in a
state divided into the following sections:

[illegible]

processing is at least a minor, if not a major, effort in the
present and wholly civil. The courts have recognized that the
Therefore, although the processing is neither wholly

1 under a criminal proceeding are equally applicable in a
2 proceeding instigated for the purpose of having one invol-
3 untarily committed to a facility designated by the Depart-
4 ment of Corrections of the State of California. It seems
5 inescapable that the privilege against self-incrimination
6 is equally applicable in the commitment proceeding since
7 the other rights which have been recognized would be of
8 little consequence if the full complement of criminal
9 safeguards were not guaranteed. A selective approach as
10 to the rights to be granted one in appellant's situation
11 would represent an arbitrary and unreasonable classifica-
12 tion the effects of which dilute the rights which are
13 granted by the very fact that similar rights are denied.

14 The correctness of this position was recognized by
15 the United States Supreme Court as early as 1886 in Boyd
16 v. United States, 116 U.S. 616 (1886), in which it was
17 held that the Fourth and Fifth Amendment protections
18 against unreasonable searches and seizures and against
19 compulsory self-incrimination applied to civil forfeiture
20 actions. The court therein stated:

21 "For the 'unreasonable searches and
22 seizures' condemned in the Fourth Amend-
23 ment are almost always made for the pur-
24 pose of compelling a man to give evidence
25 against himself, which in criminal cases
26 is condemned in the Fifth Amendment; and
compelling a man 'in a criminal case to
be a witness against himself', which is
condemned in the Fifth Amendment, throws
light on the question as to what is an
'unreasonable search and seizure' within

under a criminal proceeding the equally applicable in a
 proceeding intended for the purpose of having an individual
 actually considered as a facility designed by the Department
 of Corrections of the State of California. It seems
 inadvisable that the privilege against self-incrimination
 be equally applicable in the commitment proceeding since
 the other rights which have been recognized would be of
 little consequence if the full complement of criminal
 safeguards were not guaranteed. A selective approach as
 to the right to be present was in applicant's situation
 would represent an arbitrary and unreasonable classification
 upon the effects of which change the rights which are
 granted by the very fact that similar rights are denied.
 The enforcement of this position was recognized by
 the United States Supreme Court as early as 1950 in Boyd
v. United States, 357 U.S. 481 (1958), in which it was
 held that the Fifth and Ninth Amendment protection
 against unreasonable searches and seizures and against
 compulsory self-incrimination applied to civil reformatory
 actions. The court therein stated:

"The Fifth Amendment protects against
 'unreasonable searches and seizures' and against
 'compulsory self-incrimination'. The Fifth Amendment
 does not always apply to the government's
 power of compelling a man to give evidence
 against himself, which in criminal cases
 is contained in the Fifth Amendment; and
 compelling a man 'in a civil case to
 be a witness against himself' which is
 contained in the Fifth Amendment, there
 is light on the question as to what is an
 'unreasonable search and seizure' which

1 the meaning of the Fourth Amendment. And
2 we have been unable to perceive that the
3 seizure of a man's private books and papers
4 to be used in evidence against him is sub-
5 stantially different from compelling him to
6 be a witness against himself. We think it
7 is within the clear intent and meaning of
8 these terms. We are also clearly of opinion
9 that proceedings instituted for the pur-
10 pose of declaring the forfeiture of a man's
11 property by reason of offenses committed by
12 him, though they may be civil in form, are
13 in their nature criminal.

14 ...If the government prosecutor elects to
15 waive an indictment, and to file a civil
16 information against the claimants-that is,
17 civil in form- can he by this device take
18 from the proceeding its criminal aspect
19 and deprive the claimants of their
20 immunities as citizens, and extort from
21 them a production of their private papers,
22 or, as an alternative, a confession of
23 guilt? This cannot be. The information,
24 though technically a civil proceeding, is
25 in substance and effect a criminal one.
26 As shown in the close relation between the
civil and criminal proceedings on the
same statute in such cases, we may refer
to the recent case of Coffey v. United
States, ante, 436; in which we decided
that an acquittal on a criminal informa-
tion was a good plea in bar to a civil
information for the forfeiture of goods,
arising upon the same acts. As, therefore,
suits for penalties and forfeitures in-
curred by the commission of offenses
against the law are of this quasi-criminal
nature, we think that they are within the
reason of criminal proceedings for all the
purposes of the Fourth Amendment of the
Constitution, and of that portion of the
Fifth Amendment which declares that no per-
son shall be compelled in any criminal
case to be a witness against himself; and
we are further of the opinion that a com-
pulsory production of the private books
and papers of the owner of goods sought
to be forfeited in such a suit is com-
pelling him to be a witness against himself,
within the meaning of the Fifth Amendment

the meaning of the term "witness" and
we have been unable to determine that the
usage of a man's private name and address
to be used in evidence against him is
essentially different from compelling him to
be a witness against himself. We think it
is within the class intent and meaning of
those terms. We too also classify of witness
those proceedings initiated for the pur-
pose of obtaining the testimony of a man's
property by reason of offense committed by
him, though they may be civil in form, and
in their nature criminal.

...If the government possesses ability to
bring an indictment, and to file a bill
information against the defendant, it is
civil in form - can be by the State
from the proceeding the criminal intent
and motive the elements of their
transmission as evidence, and extent from
that a production of their private papers,
or, as an alternative, a production of
their information. The information,
though technically a civil proceeding, is
in substance and effect a criminal one.
As shown in the close relation between the
civil and criminal proceedings on the
same statute in each case, we may refer
to the recent case of United v. United
States, 254 U.S. 125, in which we decided
that an indictment as a criminal informa-
tion was a good plea in bar to a civil
information for the recovery of goods,
relating upon the same facts. In substance,
where the indictment and information are
covered by the commission of offense
against the law of this great-extended
nature, we think that they are within the
realm of criminal proceedings for all the
purposes of the Fourth Amendment of the
Constitution, and of that portion of the
Bill of Rights which declares that no per-
son shall be compelled in any criminal
case to be a witness against himself, and
we are further of the opinion that a com-
pulsory production of the private books
and papers of the owner of goods sought
to be forfeited is not a civil proceeding
but is a criminal proceeding against the
owner of the goods.

1 to the Constitution, and is the equivalent
2 of a search and seizure- and an unreason-
3 able search and seizure- within the meaning
4 of the Fourth Amendment". 116 U.S. 633-
5 635.

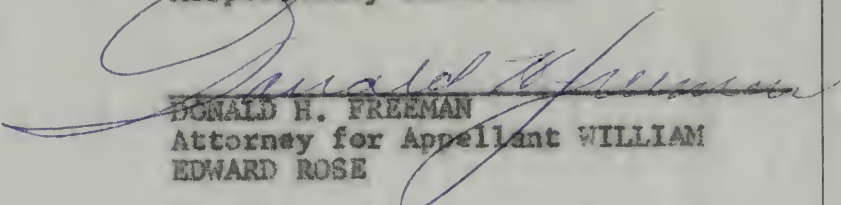
6 This principle, as set forth by the Supreme Court in
7 1886, was reiterated as recently as 1965 in 1958 Plymouth
8 Sedan v. Pennsylvania, 380 U.S. 693, holding that the con-
9 stitutional exclusionary rule applies to state forfeiture
10 proceedings.

11 Appellant submits that the foregoing authorities permit
12 no other conclusion than that requiring the appellant to
13 register pursuant to Title 18, U.S.C., Section 1407,
14 clearly contravened his privilege against self-incrimina-
15 tion.

16 VI.

17 For the foregoing reasons, it is respectfully sub-
18 mitted that conviction of appellant should be reversed
19 and the cause remanded with instructions to dismiss.

20 Respectfully submitted:

21 
DONALD H. FREEMAN

22 Attorney for Appellant WILLIAM
23 EDWARD ROSE
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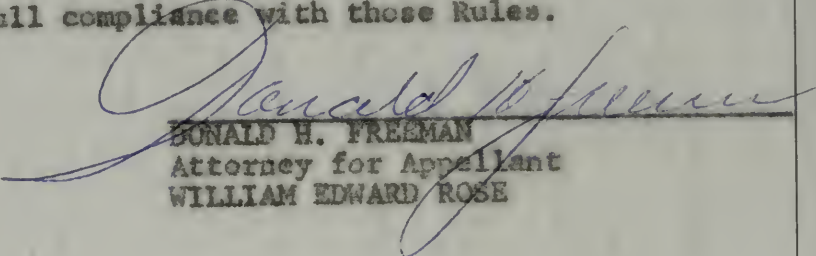
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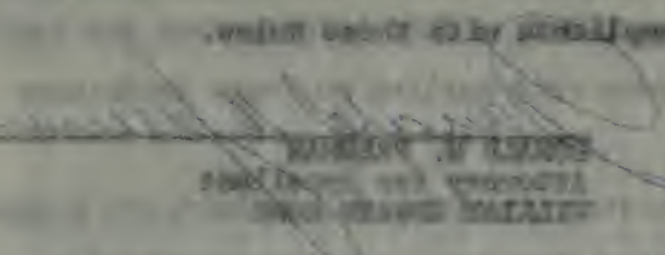
CERTIFICATE

I, DONALD H. FREEMAN, certify, in connection with the preparation of this brief, I have examined Rules 18 and 19 of the United States Court of Appeals for the Ninth Circuit and that, in my opinion, the foregoing brief is in full compliance with those Rules.


DONALD H. FREEMAN
Attorney for Appellant
WILLIAM EDWARD ROSE

EXHIBIT

I, DONALD H. FARMER, certify, in connection with the preparation of this trial, I have examined the and it is the United States Court at Seattle for the which records are kept, in my opinion, the foregoing is a full and complete copy of the same.


DONALD H. FARMER
Attorney for the Defendant
JAMES EARL RAY

Title 18, U.S.C. Section 1407: Border crossing-narcotic addicts and violators

"(a) In order further to give effect to the obligations of the United States pursuant to the Hague convention of 1912, proclaimed as a treaty on March 3, 1915 (38 Stat. 1912), and the limitation convention of 1931, proclaimed as a treaty on July 10, 1933 (48 Stat. 1571), and in order to facilitate more effective control of the international traffic in narcotic drugs, and to prevent the spread of drug addiction, no citizen of the United States who is addicted to or uses narcotic drugs, as defined in section 4731 of the Internal Revenue Code of 1954, as amended (except a person using such narcotic drugs as a result of sickness or accident or injury and to whom such narcotic drug is being furnished, prescribed, or administered in good faith by a duly licensed physician in attendance upon such person, in the course of his professional practice) or who has been convicted of a violation of any of the narcotic or marihuana laws of the United States, or of any State thereof, the penalty for which is imprisonment for more than one year, shall depart from or enter into or attempt to depart from or enter into the United States, unless such person registers, under such rules and regulations as may be prescribed by the Secretary of the Treasury with a customs official, agent, or employee at a point of entry or a border customs station. Unless otherwise prohibited by law or Federal regulation such customs official, agent or employee shall issue a certificate to any such person departing from the United States; and such person shall, upon returning to the United States, surrender such certificate to the customs official, agent, or employee present at the port of entry or border customs station.

(b) Whoever violates any of the provisions of this section shall be punished for each such violation by a fine of not more than \$1,000 or imprisonment for not less than one nor more than three years, or both. Added July 18, 1956, c.629, Title II, § 201, 70 Stat. 574".

[illegible]

(b) "However, violators may at the discretion of the
 medical staff be punished for each camp violation by
 a fine of not more than \$1,000 or imprisonment for
 not more than one year or both."
 Added July 10, 1936, at NY, Title II, § 901, 75 Stat.
 1380.

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STATE OF CALIFORNIA
COUNTY OF SAN DIEGO

LOIS FREEMAN after being first duly sworn,
deposes and says:

That I am a citizen of the United States, over 18 years of age, a resident of the County of San Diego, and not a party to the within action. My business address is 345 East Eighth Street, National City, California, 92050.

I served the attached Appellant's Opening Brief by placing a true copy thereof in an envelope addressed to:

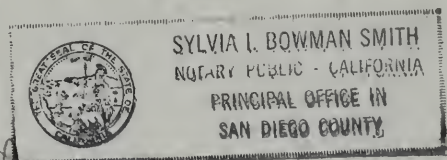
PHILLIP W. JOHNSON
Assistant United States Attorney
U.S. Courthouse Building
325 West "F" Street
San Diego, California

which envelope was then sealed and postage fully prepaid thereon and thereafter was on December 27, 1960, deposited in the United States mail at National City, California; there is delivery service by the United States Mail at the place so addressed, or regular communication by United States mail between the place of mailing and the place so addressed.

Lois Freeman
LOIS FREEMAN
Affiant

SUBSCRIBED AND SWORN TO
BEFORE ME THIS 27th DAY
OF DECEMBER, 1966

Sylvia J. Bonneau Smith
NOTARY PUBLIC in and for said
County and State



Sylvia I. Bowman Smith Notary Public
My commission expires Aug. 22, 1967

STATE OF CALIFORNIA

JOHN F. BOWMAN

JOHN F. BOWMAN

JOHN F. BOWMAN

JOHN F. BOWMAN

JOHN F. BOWMAN

JOHN F. BOWMAN

JOHN F. BOWMAN



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